IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

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WRIT PETITION Nos. 20403 of 2003, 20571 of 2003,

25300 of 2003, 13909 of 2004, 20723 of 2003 &

Contempt Case No. 883 of 2004 in W.P.No. 20571 of 2003

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1) WRIT PETITION NO : 20403 of 2003

Between:

G.V. Ramana Murthy, S/o. Srinivasa Rao,
Tallapalem, Nidadavole Mandal,
W.G.District.

..... PETITIONER

AND

1 The Superintending Engineer (operation),
Eastern Power Distribution Co., Ltd.,
Eluru, Near Gajjalavari Tank, Eluru-1.
2 The Chairman and Managing Director of Eastern Power Distribution Company Limited of Andhra Pradesh, Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any Writ, Order or direction more particularly one in the nature of Writ of Mandamus:- i) To declare the action of the respondents herein as illegal, arbitrary and unconstitutional in issuing the Memo dated 12-9-2003 vide Letter No.SE/0/ELR/Adm/ F.1347/D.No. 527/03 and set aside the same. ii) To declare the action of the respondents herein in not appointing the petitioner as L.D.C as illegal

and arbitrary. iii) To direct the respondents to appoint the petitioners herein as L.D.C under the respondents in the interest of justice and equity.

Counsel for the Petitioner: MS.R.ANNAPURNA

Counsel for the Respondents: Sri G.Vidya Sagar.

2) WRIT PETITION NO : 20571 of 2003

Between:

K. Ranga Rao, S/o Raghunadha Rao,
R/o Devinilayam, Konkanalavari Street, Eluru, W.G District

..... PETITIONER

AND

1 The Superintending Engineer, Operation,
Eastern Power Distribution Co. Ltd.,/Eluru
Near Gajjalavari Tank, Eluru -1-.
2 The Chairman & Managing Director of Eastern Power Distribution Co. Ltd.
of A.P., Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any Writ, Order or direction more particularly one in the nature of Writ of Mandamus:- i) To declare the action of the respondents herein as illegal, arbitrary and unconstitutional in issuing the Memo dated 12-9-2003 vide Letter No. SE/O/ELR/Adm/F.137/D.No. 526/03 and set aside the same ii) To declare the action of the respondents herein in not appointing the petitioner as LDC as illegal and arbitrary iii) To direct the respondents to appoint the petitioners herein as LDC under the respondents in the interest of justice and equity.

Counsel for the Petitioner: MS.R.ANNAPURNA

Counsel for the Respondents : Mr. G.Vidya Sagar.

3) WRIT PETITION NO : 25300 of 2003

Between:

M. Bhaskar Rao, S/o Buchaiah,
R/o Uppakapadu, Tadepalligudem Mandal, West Godavari District

..... PETITIONER

AND

1 The Superintending Engineer, Operation, Eastern Power Distribution Co. Ltd., Eluru, Near Gajjalavari Tank, Eluru -1
2 The Chairman & Managing Director of Eastern Power Distribution Co. Ltd. of A.P., Visakhapatnam

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an Writ, Order or direction more particularly one in the nature of Writ of Mandamus:- i) To declare the action of the respondents herein as illegal, arbitrary and unconstitutional in issuing the Memo dated 12-9-2003 vide Letter No. SE/O/ELR/Adm/F. 137/D.No. 523/03 and set aside the same ii) To declare the action of the respondents herein in not appointing the petitioner as L.D.C. as illegal and arbitrary iii) To direct the respondents to appoint the petitioners herein as L.D.C. under the respondents.

Counsel for the Petitioner: MS.R.ANNAPURNA

Counsel for the Respondents : Mr. G.Vidya Sagar.

4) WRIT PETITION NO : 13909 of 2004

Between:

T. Krishna Bhupala Varma S/o. T. Marini Raju
D.No. 4-168-3, Weakers Colony, Near Govt. Hospital,
Tadepalligudem, W.G.District.

..... PETITIONER

AND

1 The Superintending Engineer, Operation, Eastern Power Distribution Co. Ltd., Eluru, Near Gajjalavari Tank, Eluru -1
2 The Chairman & Managing Director of Eastern Power Distribution Co. Ltd. of A.P., Visakhapatnam

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any writ, order or direction more particularly one in the nature of Mandamus; 1) To declare the action of the respondents herein as illegal, arbitrary and unconstitutional in issuing the Memo Dt. 12-9-2003 vide Letter No.

SE/O/ELR/Adm/F. 137/D. No. 486/2003 and set aside the same. 2) To declare the action of the respondents herein in not appointing the petitioner as L.D.C. as illegal and arbitrary. 3) To direct the respondents to appoint the petitioners herein as L.D.C. under the respondents.

Counsel for the Petitioner: MS.R.ANNAPURNA

Counsel for the Respondents: Ms. G.Vidya Sagar

5)WRIT PETITION NO : 20723 of 2003

Between:

Chatti Manikya Srinivas, S/o.Ch.V.Krishna,
R/o. Vizzeswaram Nidadavole Mandal, W.G.District.

..... PETITIONER

AND

1 The Superintendent Engineer, Operation Circle, Andhra Pradesh Eastern Power Distribution Co. Ltd, Eluru, W.G.Dist.
2 The Chief General Manager(HRO) Andhra Pradesh Eastern Power Distribution Co.Ltd, Corporation Office, Visakhapatnam

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction declaring the proceedings of the 1st respondent in Lr.No.SF/O/FLR/ADM/F.137/D.No.485/02, dt.12.9.2003 is illegal, arbitrary and issue consequential directions to the respondents to regularise the services of the petitioner as Sub-Engineer in the Respondent corporation with all consequential benefits.

Counsel for the Petitioner: MR.K.CHIDAMBARAM

Counsel for the Respondents: Mr. G.Vidya Sagar

6)CONTEMPT CASE NO : 883 of 2004

(Contempt Case U/s. 10 to 12 of Contempt of Courts Act to punish the Respondents herein for violating, disobeying the Order of the High Court dated 23.10.2004 in WPMP No 25757 of 2003 WP No. 20571 of 2003.

Between:

K. Ranga Rao, s/o Raghunadha Rao,

R/o Rustumbada, 24th Ward,
Narasapuram, W.G.Dist.

..... PETITIONER

AND

1 Y.P.M.M. PRasad, Superintending Engineer-
Operation , Eastern Power distribution Co. Ltd.,
Eluru, Near Gajjalavari Tank, Eluru-1.
2 Y. Gopalakrishna,
Chairman & Managing Director of Eastern Power distribution Co. Ltd.,
A.P., Visakhapatnam.

.....RESPONDENTS

Counsel for the Petitioner: MS.R.ANNAPURNA

Counsel for the Respondents: Mr. G.Vidya Sagar.

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION Nos. 20403 of 2003, 20571 of 2003,

25300 of 2003, 13909 of 2004, 20723 of 2003 &

Contempt Case No. 883 of 2004 in W.P.No. 20571 of 2003

COMMON ORDER:

Heard Smt. R.Annapurna, learned counsel appearing for the petitioners in all the Writ Petitions and in the contempt case, and Sri G.Vidyasagar, learned counsel appearing on behalf of the respondents 1 and 2. Since common questions are involved in all these matters, they are being taken up together for disposal.

The Contempt Case No. 883 of 2004 is filed by the petitioners in Writ Petition No. 20571 of 2003 complaining against non-implementation and violation of the interim orders passed by this Court in W.P.M.P. No. 25757 of 2003, dated 23.10.2003, whereunder this Court while acceding to the prayer as sought for, directed the respondents to reconsider the case of the petitioner therein for the post of L.D.C. by setting aside the order dated 12.09.2003.

The shorn of facts, though in brief, is that the petitioners herein who have been working as contract labour with the respondents herein, filed the respective Writ Petitions seeking for a Writ of Mandamus assailing the impugned orders dated 12.09.2003, rejecting their cases for appointment as L.D.C. as being not eligible, as illegal, bad and set aside the same; and further direct the respondents to appoint them to the said post.

The case of the petitioners is that they have been working as contract labour from the year 1992 onwards. In pursuance of a notification issued on 22.09.2000 for filling up of vacant posts in terms of the B.P. Ms. No.36, dated 18.05.1997, which was again in pursuance of a direction given in Writ Petition No. 5064 of 1999, dated 18.11.1999, they applied for the said posts. However, since their cases were not being considered, petitioners filed Writ Petition No. 14241 of 2002, which was disposed of as per the orders dated 11.03.2002 directing the respondents to consider the case of the petitioners and pass appropriate orders in accordance with law and conduct interviews for the posts specified therein within a period of one month. It is pointed out on behalf of the petitioners that at this point of time and more so as per the admitted allegations as made in the counter affidavit, the petitioners were working as on 18.05.1997 and there was no dispute regarding this aspect. In terms of the directions given, the notification was issued calling all the eligible candidates for interviews on 14.06.2003 and 15.06.2003 and it is submitted that the petitioners

have scored well. In spite of the same, under the impugned orders, claim of the petitioners was rejected on the sole ground that they were not on rolls as on 18.05.1997, as contemplated under B.P. No. 36, dated 18.05.1997. It is the case of the petitioners that there is ample evidence on record and especially the certificate issued by the contractors would show that they were already on rolls as on 18.05.1997 and therefore, rejection of their cases on such ground is wholly unsustainable. Further, it is also pointed out that having admitted that the petitioners were on rolls on 18.05.1997 in the earlier round of litigation, it is not open for the respondents to recile back and dispute the same. Hence, the Writ Petitions.

In Writ Petition No. 20571 of 2003, initially this Court granted interim direction as stated above and since there was no compliance thereof, the petitioner therein had filed the Contempt Case No. 883 of 2004 and the same is being taken up along with these Writ Petitions for disposal.

Contesting the petitioners' claim, the case of the respondents is that the allegation of the petitioners that they were on rolls as on 18.05.1997 is not correct and further, the certificates filed in support thereof, are not genuine. Therefore, there being no valid material to act upon or to support their employment on the relevant date as contemplated under B.P. Ms. No.36, dated 18.05.1997, the petitioners are not entitled to seek any appointment, much less any indulgence from this Court.

Considering the submissions made and on perusal of the material, the question which falls for consideration in these matters is as to whether the petitioners are eligible for consideration for appointment to the posts as per the notification dated 22.09.2000 in terms of the B.P. Ms. No.36, dated 18.05.1997 ?

There is no dispute to the basic fact that the petitioners were working as contract labour for quite some time with the respondents herein. Now, under the scheme as enunciated in B.P. Ms. No. 36, dated 18.05.1997, the relevant date to be considered is 'date of its issue', on which date, the applicant has to be on the rolls. There is no dispute to the fact that the petitioners did respond to the notification issued by the respondents herein on 22.09.2000 and they were also called for interviews, though in terms of the directions given by this Court in the earlier Writ Petition. In Writ Petition No. 14241 of 2002, though the petitioner's claim was being contested on various other grounds, however, there was no dispute in regard to the fact that the petitioners were on rolls as on 18.05.1997. Even in the counter affidavit filed in the aforesaid contempt case, it is stated that the petitioners were on rolls on the said relevant date. It is only for the first time in the impugned orders, that too much after conducting the interviews, their claims were sought to be rejected on the ground that the certificates produced by them in support of their employment on the relevant date, not genuine.

The petitioners pointed out that there was no enquiry nor there is any opportunity provided to them to substantiate their respective claim either as to the genuineness or otherwise of the certificate, and the objection made as to the genuineness is coming forth for the first time in the impugned orders. It is submitted by the learned counsel appearing on behalf of the respondents that subsequent to filing of the aforesaid certificates, the respondents themselves made attempt to verify them and found that the certificates are not genuine and in fact, several such certificates have been secured.

Admittedly, on either side, there was no attempt to produce the contractor either to accept or deny its authorship, or even to prove or disprove the same. Further, no summon was issued to such

contractors to verify the genuineness. Except stating that the respondents have verified with the contractors, there is nothing on record to show that there is any such proceedings, much less any other material coming forth from the side of the said contractors to show that the said certificates are not genuine. In the circumstances, it has to be held that rejection of certificates on the ground that they are not genuine, virtually affects the substantive rights coming to a finding without a proper enquiry.

The learned counsel for the petitioners submits that if an enquiry is conducted, they are prepared to produce the contractors and prove the genuineness of certificates. Therefore, it has to be held that the impugned orders of rejection are not only opposed to the basic principles of natural justice, but virtually amount to attributing imputation for no valid reason or a valid material. In the circumstances, it is not proper to go into the aspect as to whether the petitioners were on rolls or not on the relevant date, which is purely a factual aspect and can not be gone into in exercise of powers under Article 226 of the Constitution of India. It is felt more desirable, as acceded to from both the sides, to hold an enquiry permitting both sides to substantiate their cases from a proper perspective.

The Writ Petitions are, accordingly, disposed of directing the second respondent to hold an enquiry by giving notice to all the petitioners and such other applicants for their appearance and production of necessary material in support of proof of genuineness of the respective certificates produced by them. To avoid further delay, the date of enquiry is fixed on 08.04.2005 at 10.30 AM before the first respondent, for which the respondents shall issue intimation to all the parties concerned including the petitioners herein and the contractors who had issued certificates, for their appearance, and the first respondent shall complete the entire process within a period of two months thereafter. It shall be open for all the parties viz. petitioners,

respondents and all the parties concerned, to produce any evidence, material, both oral and documentary, during the course of the enquiry, in support of their respective cases and also to summon the contractors who had issued the certificates.

Learned counsel for the petitioners in all the cases undertakes to intimate the contractors for their appearance on the said date without insisting upon formalities of serving any notices as such.

Consequent on the disposal of all the Writ Petitions on merits directing consideration as to the genuineness of the certificates by holding an enquiry, it is not necessary to go into the allegations of contempt. Unless and until such question is ultimately decided by the respondents herein, it can not be said that there is any contempt. Accordingly, the contempt case is closed.

(B.Prakash Rao, J.)

07.03.2005

DRK

Copy to:

1 The Superintending Engineer (operation),
Eastern Power Distribution Co., Ltd.,
Eluru, Near Gajjalavari Tank, Eluru-1.
2 The Chairman and Managing Director of Eastern Power Distribution
Company Limited of Andhra Pradesh, Visakhapatnam.

3 Two CD copies.